

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington Corporation, Plaintiff, v. AVENTIS SYSTEMS, INC., a Georgia corporation; and HESAM LAMEI, an individual, Defendants.)) CASE NO. C16-1234RSM))) ORDER GRANTING IN PART AND) DENYING IN PART DEFENDANTS') MOTION TO DISMISS))))))
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I. INTRODUCTION

This matter comes before the Court on Defendants’ Motion to Dismiss for lack of personal jurisdiction, improper venue, and, alternatively, for failure to state a claim upon which relief may be granted. Dkt. #17. Defendants seek a dismissal of all claims against the Defendant company as well as individual Defendant Hesam Lamei. *Id.* Plaintiff concedes the dismissal of Mr. Lamei, but argues that it has demonstrated personal jurisdiction over the company in this action. Dkt. #21. For the reasons discussed herein, the Court GRANTS IN PART and DENIES IN PART Defendants’ motion.

II. BACKGROUND

Plaintiff develops, distributes, and licenses various types of computer software, including operating system software (such as Microsoft Windows) and productivity software

1 (such as Microsoft Office). Dkt. #1 at ¶¶ 15-17. Microsoft holds registered copyrights in the
2 various different versions of these products, and has registered trademarks and service marks
3 associated with the products. *Id.*

4 Microsoft has identified thousands of product key activations originating from IP
5 addresses assigned to Defendant Aventis, and that were being used to activate unlicensed
6 Microsoft software. Dkt. #22 at ¶ 10. Microsoft asserts that these activations constitute the
7 unauthorized copying, distribution, and use of Microsoft software, in violation of Microsoft's
8 software licenses and intellectual property rights. Dkt. #1 at ¶¶ 38-39.

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10 Defendant Aventis Systems, Inc. ("Aventis") is a Georgia corporation based in
11 Marietta, Georgia, and Mr. Lamei is the President, CEO, and Registered Agent of the
12 corporation. Dkt. #20 at ¶¶ 2 and 4. Aventis advertises and sells computers, computer
13 products and software through websites. A small part of its business is selling repaired and
14 refurbished desktop computers. *Id.* at ¶ 3. Defendants assert that Aventis does not directly
15 advertise to or solicit business in Washington except through its Internet presence. *Id.* at ¶ 17.
16 Aventis has made between 1.9% and 2.9% of its yearly sales from 2013-2016 to customers in
17 Washington State. *Id.*

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20 Aventis has thirty-seven employees, including Mr. Lamei, the CEO. *Id.* at ¶ 3. All of
21 Aventis's employees reside in Georgia except for one who works in the state of Indiana and
22 one who works in the state of Minnesota. *Id.* at ¶ 9. Defendants have never had any offices,
23 bank accounts, post office boxes, or employees in Washington. *Id.* at ¶¶ 5-6. Defendants have
24 never owned or controlled any real or personal property in the state of Washington. *Id.* at ¶ 6.
25 Aventis is not licensed or registered to do business in Washington, and Defendants have never
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1 paid taxes in Washington. Dkt. #20 at ¶¶ 8 and 11. Aventis has never advertised or solicited
2 business in Washington. *Id.* at ¶ 12.

3 III. DISCUSSION

4 A. Standard of Review for Motions Under 12(b)(2)

5 The Court first addresses Defendants' arguments regarding personal jurisdiction under
6 Federal Rule of Civil Procedure 12(b)(2). Where a defendant moves to dismiss a complaint for
7 lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is
8 appropriate. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). A
9 plaintiff cannot simply rest on the bare allegations of his Complaint, but rather is obligated to
10 come forward with facts, by affidavit or otherwise, supporting personal jurisdiction. *Amba*
11 *Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977). Where,
12 as here, the motion is based on written materials rather than an evidentiary hearing, the plaintiff
13 need only make a *prima facie* showing of jurisdictional facts. *Schwarzenegger*, at 800.
14 Uncontroverted factual allegations must be taken as true. Conflicts between parties over
15 statements contained in affidavits must be resolved in the plaintiff's favor. *Id.* A *prima facie*
16 showing means that the plaintiff has produced admissible evidence, which if believed, is
17 sufficient to establish the existence of personal jurisdiction. *Ballard v. Savage*, 65 F.3d 1495,
18 1498 (9th Cir. 1995).

19 Where no applicable federal statute addresses the issue, a court's personal jurisdiction
20 analysis begins with the "long-arm" statute of the state in which the court sits. *Glencore Grain*
21 *Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002).
22 Washington's long-arm statute extends the court's personal jurisdiction to the broadest reach
23 that the United States Constitution permits. *Byron Nelson Co. v. Orchard Management Corp.*

1 95 Wn.App. 462, 465, 975 P.2d 555 (1999). Because Washington’s long-arm jurisdictional
2 statute is coextensive with federal due process requirements, the jurisdictional analysis under
3 state law and federal due process are the same. *Schwarzenegger*, at 800-01.

4 The Due Process Clause protects a defendant’s liberty interest in not being subject to
5 the binding judgments of a forum with which it has established no meaningful contacts, ties or
6 relations. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72, 105 S. Ct. 2174, 85 L. Ed.
7 2d 528 (1985). In determining whether a defendant had minimum contacts with the forum state
8 such that the exercise of jurisdiction over the defendant would not offend the Due Process
9 Clause, courts focus on the relationship among the defendant, the forum, and the litigation.
10 *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977).
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13 Personal jurisdiction exists in two forms, general and specific. *Dole Food Co. v. Watts*,
14 303 F.3d 1104, 1111 (9th Cir.2002). General jurisdiction exists over a non-resident defendant
15 when there is “continuous and systematic general business contacts that approximate physical
16 presence in the forum state.” *Schwarzenegger*, at 801. In the absence of general jurisdiction,
17 the court may still exercise specific jurisdiction over a non-resident defendant. To establish
18 specific jurisdiction, the plaintiff must show that: (1) defendant purposefully availed itself of
19 the privilege of conducting activities in Washington, thereby invoking the benefits and
20 protections of its laws; (2) plaintiff’s claims arise out of defendant’s Washington-related
21 activities; and (3) the exercise of jurisdiction would be reasonable. *Easter v. American West*
22 *Financial*, 381 F.3d 948, 960-61 (9th Cir. 2004); *Bancroft & Masters, Inc. v. Augusta Nat’l*
23 *Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).
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1 *1. General Jurisdiction*

2 A defendant is subject to general jurisdiction only where the defendant's contacts with a
3 forum are "substantial" or "continuous and systematic." *Bancroft & Masters, Inc. v. Augusta*
4 *Nat'l, Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). As the Ninth Circuit has recently noted,
5 "[g]eneral jurisdiction over a corporation is appropriate only when the corporation's contacts
6 with the forum state 'are so constant and pervasive as to render it essentially at home' in the
7 state." *Martinez v. Aero Caribbean*, 2014 U.S. App. LEXIS 16163, *8 (9th Cir. Aug. 21,
8 2014)(citation omitted). Plaintiff does not dispute that general jurisdiction over both
9 Defendants is lacking in this matter. Accordingly, the Court turns to whether it has specific
10 jurisdiction over Defendants.
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12 *2. Specific Jurisdiction*

13 a. Defendant Lamei

14 As an initial matter, the Court DISMISSES Defendant Lamei from this action. Plaintiff
15 agrees to such dismissal, without prejudice, based on the representations made in Mr. Lamei's
16 Declaration. Dkt. #21 at 1 fn. 1. Accordingly, that portion of the instant motion is GRANTED.
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19 b. Defendant Aventis

20 The Court now turns to the question of jurisdiction over Defendant Aventis. As noted
21 above, in the Ninth Circuit, specific jurisdiction is analyzed using a three-part test: First, the
22 nonresident defendant must have purposefully directed his activities or consummated some
23 transaction with the forum or a forum resident, or performed some act by which he
24 purposefully availed himself of the privilege of conducting activities in the forum, thereby
25 invoking the benefits and protections of its laws; second, the claim must be one which arises
26 out of or relates to the nonresident defendant's forum-related activities; and third, the exercise
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1 of jurisdiction must comport with fair play and substantial justice, *i.e.*, it must be reasonable. If
2 the plaintiff is successful at establishing the first two prongs, the burden shifts to the defendant
3 to set forth a compelling case that the exercise of jurisdiction would not be reasonable.

4 The first prong of the test is analyzed under either a “purposeful availment” standard or
5 a “purposeful direction” standard, which are two distinct concepts. *Washington Shoe Co. v. A-*
6 *Z Sporting Goods Inc.*, 704 F.3d 668, 672 (9th Cir. 2012). Generally for claims sounding in
7 contract, courts apply a “purposeful availment” analysis, asking whether the defendant has
8 “purposefully avail[ed]” itself of “the privilege of conducting activities within the forum State,
9 thus invoking the benefits and protections of its laws.” *Schwarzenegger*, 374 F.3d at 802. For
10 claims sounding in tort, courts generally apply a “purposeful direction” test, looking to
11 evidence that the defendant has directed his actions at the forum state, even if those actions
12 took place elsewhere. *Schwarzenegger*, 374 F.3d at 802-03.

15 To establish purposeful direction, the plaintiff must show that the defendant committed
16 an intentional act, expressly aimed at the forum state, causing harm that the defendant knows is
17 likely to be suffered in the forum state. *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th
18 Cir. 2002) (citing *Calder v. Jones*, 465 U.S. 783, 788-89, 104 S. Ct. 1482, 79 L. Ed. 2d 804
19 (1984)). In cases involving allegations such as trademark infringement and misappropriation
20 the Ninth Circuit focuses on “purposeful direction,” applying the “*Calder* effects” test. *Mavrix*
21 *Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011) (“Because
22 [plaintiff] has alleged copyright infringement, a tort-like cause of action, purposeful direction
23 ‘is the proper analytical framework.’”); *Facebook, Inc. v. Pedersen*, 868 F. Supp.2d 953, 958
24 (N.D. Cal. 2012) (“The Court finds that the *Calder* effects test is the proper framework for
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1 analyzing the exercise of specific personal jurisdiction over defendants, because [the plaintiff]
2 alleges trademark dilution and infringement, both of which are tort-like causes of action.”).

3 *i. Purposeful Direction of Actions At the Forum State*

4 Defendant Aventis appears not to challenge in this motion that it committed an
5 intentional act causing harm it knew would likely to be suffered in the forum State. Dkt. #17 at
6 7. However, Defendants argue that Aventis has not purposefully directed any of its activities
7 toward Washington, and has not availed itself of any Washington laws, policies, processes or
8 regulations. Dkt. # 17 at 7. Defendants then go on to argue that Aventis has conducted no
9 activity targeting “California [sic] or its consumers.” *Id.* at 7-8. Plaintiff responds that Aventis
10 purposefully aimed its activities in Washington when it sold pirated software to Washington
11 consumers, and affirmatively contacted Microsoft’s servers in Washington to activate the
12 software. Dkt. #21 at 9-10.

15 Plaintiff relies on this Court’s prior decision in a nearly identical case, *Microsoft v.*
16 *Mountain West Computers, Inc.*, Case No. C14-1772RSM (W.D. Wash. Jul. 22, 2015), in
17 which the Court denied Defendant’s motion to dismiss for lack of jurisdiction. In that case, this
18 Court examined the U.S. Supreme Court’s decision in *Walden v. Fiore*, 134 S. Ct. 1115, 188 L.
19 Ed. 2d 12 (2014), which reversed the Ninth Circuit to hold that personal jurisdiction “must
20 arise out of contacts that the ‘defendant *himself*’ creates with the forum State” and that “the
21 plaintiff cannot be the only link between the defendant and the forum.” *Walden*, 134 S. Ct. at
22 1122. The Supreme Court expressly extended its holding to the intentional tort context,
23 explaining that it was rooted in the proposition that “[d]ue process limits on the State’s
24 adjudicative authority principally protect the liberty of the nonresident defendant – not the
25 convenience of plaintiffs or third parties.” *See id.* at 1122-23. The court rejected the idea,
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1 inherent in *Washington Shoe*, that a defendant's knowledge of a plaintiff's forum connections
2 and the foreseeability of harm there are enough in themselves to satisfy the minimum contacts
3 analysis. *Id.* at 1124-25. This Court then went on to deny Defendant's motion to dismiss
4 because it found that the defendants had ordered products directly from a vendor located in the
5 forum state, and then affirmatively contacted Microsoft through internet contact with its servers
6 and by telephone to validate the software it was installing. *Mountain West Computers, Inc.*,
7 Case No. C14-1772RSM, Dkt. #37 at 12-13.

9 In the instant matter, the allegations are that Defendants accessed Plaintiff's computer
10 servers to unlawfully validate unlicensed software in violation of trademark and copyright
11 laws. Further, Aventis is alleged, and in fact admits, to have sold computers containing the
12 alleged pirated software to consumers in this forum. Such allegations, if true, satisfy the
13 "express aiming" element. The Defendants' alleged actions were intentional and directed at
14 Plaintiff. The alleged actions were not merely contacts with Washington that could have
15 foreseeable effects in Washington. Here, the alleged actions were aimed at a Washington
16 business. If the allegations are true, it was not only foreseeable but certain that their conduct
17 would harm Plaintiff in Washington.

19 This conclusion is supported by Ninth Circuit authority. Where a tort is "intentional,"
20 the Ninth Circuit has "found jurisdiction in the plaintiff's home forum," even though the
21 directions of the intentional act and the known impact diverged, because "in such cases the
22 'acts are performed for the very purpose of having their consequences felt in the forum state.'"
23 *Id.* at 675-76 (quoting *Brainerd v. Governors of the Univ. of Alberta*, 873 F.2d 1257, 1260 (9th
24 Cir. 1989)). "[T]he respective directions of the intentional act and the known impact need not
25 coincide for the 'express aiming' requirement to be satisfied." *Id.* This is particularly salient
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1 with respect to claims of infringement of intellectual property rights. *See Washington Shoe,*
2 704 F.3d at 675; *Adobe Sys. Inc. v. Blue Source Grp., Inc.*, 125 F. Supp.3d 945, 961 (N.D. Cal.
3 2015) (citing and collecting cases where courts have held that “specific jurisdiction exists
4 where a plaintiff files suit in its home state against an out-of-state defendant and alleges that
5 defendant intentionally infringed its intellectual property rights knowing [the plaintiff] was
6 located in the forum state” (internal citation omitted)).

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8 Defendants rely on an unpublished Ninth Circuit case, *Hatset v. Century 21 Gold Coast*
9 *Realty*, 649 Fed. Appx. 400 (9th Cir. Apr. 20, 2016), to support its assertion that the only
10 connection that Aventis has with this forum is in adequate. Setting aside that the cited case has
11 no precedential value (it being unpublished) the Ninth Circuit emphasized in that case:

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13 The only connection between Goldenberg and California is the fact that
14 Hatset is a California resident. But as the Supreme Court has recently
15 explained, “the plaintiff *cannot* be the only link between the defendant and
16 the forum. Rather, it is the defendant’s conduct that must form the
17 necessary connection with the forum State that is the basis for its
18 jurisdiction over him Due process requires that a defendant be haled
19 into court in a forum State based on his *own affiliation* with the State, not
20 based on the ‘random, fortuitous, or attenuated’ contacts he makes by
21 interacting with other persons affiliated with the State.” *Walden v. Fiore*,
22 134 S. Ct. 1115, 1122-23, 188 L. Ed. 2d 12 (2014) (emphasis added)
23 (internal citations omitted).

24 *Hatset*, 649 Fed. Appx. At 402.

25 Here, it is the Defendants’ conduct on which this Court focuses. Defendants admit that
26 a portion of Aventis’s sales, albeit a small one, are made to Washington consumers. Dkt. #17
27 at ¶ 20. Further, it does not provide any evidence refuting that on March 6, 2016, Aventis sold
28 a refurbished computer system originally manufactured by Dell to a person located in
Washington pre-installed with Windows 7 Professional. *See* Dkt. #22 at ¶ 12. It further does
not provide any evidence refuting that it installed and activated that software with a product

1 key distributed to Hewlett Packard for use only with an HP device. *Id.* Likewise, it does not
2 dispute that it had knowledge that Plaintiff is located in this forum. Accordingly, the Court
3 finds the conduct allegedly engaged in by the Defendants was expressly aimed at Washington.

4 *ii. Claims Arise or Result from Forum Related Activities*

5 The second part of the test for specific personal jurisdiction directs that the Court
6 determine whether the plaintiff's claims "arise out" of the defendants' forum-related activities.
7 The Ninth Circuit has adopted the "but for" test to determine the "arising out of" requirement.
8 *Gray & Co. v. Firstenberg Mach. Co.*, 913 F.2d 758, 761 (9th Cir. 1990) (internal citation
9 omitted). "The Ninth Circuit has recognized that, in trademark or copyright infringement
10 actions, if the defendant's infringing conduct harms the plaintiff in the forum, this element is
11 satisfied." *Adobe Sys.*, 125 F. Supp. 3d at 963.
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13 Plaintiff's claims against Defendants are: Copyright Infringement, Trademark
14 Infringement, False Designation of Origin, False Description and Representation of Microsoft
15 Packaging and Programs, Unfair or Deceptive Acts or Practices in violation of RCW 19.86, *et*
16 *seq.*, Common Law Unfair Competition, Imposition of a Constructive Trust and Accounting.
17 Dkt. #1 at ¶¶ 44-91. These claims are derived from Plaintiff's allegations discussed above that
18 satisfied the purposeful availment/direction prong. Defendants only argument as to this
19 element is that the infringement claims would exist even without their contacts with
20 Washington. The Court is not persuaded. But for the alleged conduct of the Defendants, the
21 alleged injuries to Plaintiff would not have occurred. Plaintiff's claims against Defendants are
22 derived from the Defendants' intentional conduct with consumers located in Washington and
23 contact with Plaintiff's servers located in Washington such that the claims arise out of the
24 alleged violating conduct.
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iii. Reasonableness of Exercising Jurisdiction

Finally, the Court must determine whether the exercise of jurisdiction is reasonable. When making this determination, the Court examines seven factors: 1) existence of an alternative forum; 2) burden on the defendant; 3) convenience and effectiveness of relief for the plaintiff; 4) most efficient judicial resolution of the dispute; 5) conflict with sovereignty of the defendants' state; 6) extent of purposeful interjection; and the forum state's interest in the suit. *Brand v. Menlove Dodge*, 796 F. 2d 1070, 1075 (9th Cir. 1986).

1. Existence of An Alternative Forum

Neither party disputes that the Northern District of Georgia exists as an alternative forum. However, "[w]hether another reasonable forum exists becomes an issue only when the forum state is shown to be unreasonable." *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1080 (9th Cir. 2011) (quotation omitted). As discussed below, the Court finds this forum to be reasonable. Therefore, this factor is neutral.

2. Burden on the Defendant

Defendants argue that litigating this case in this District would be an "extreme 'burden'". Dkt. #17 at 9. They emphasize that they are not Washington residents, have no assets or property located in Washington, and do not travel to Washington. *Id.* Defendants further argue that, most significantly, traveling to Washington for trial would "substantially disrupt" business. *Id.* However, this Court has often held that the mere fact a Defendant is located out of state is insufficient to show an "excessive geographic burden." *See, e.g., Authentify Patent Co., LLC v. StrikeForce Techs., Inc.*, 39 F. Supp.3d 1135, 1147-48 (W.D. Wash. 2014) (finding that a New Jersey-based defendant had not demonstrated excessive geographic burden). Indeed, with respect to the discovery process, it is common that

1 information and documents are now exchanged electronically. *See Wilton v. Hallco Indus.,*
2 *Inc.*, 2009 WL 113735, at *3 (W.D. Wash. Jan. 15, 2009). Further, in this Court, unless
3 otherwise ordered by the Court, motions are decided on the pleadings without oral argument.
4 Local Civil Rule 7(b)(4). It is also typical for out-of-state parties to appear by telephone for
5 efficiency and to contain costs. As for the requirement of a company representative at trial,
6 Defendants have failed to demonstrate that Mr. Lamei would necessarily be away from his
7 company so long that his business would suffer. Accordingly, the Court does not find that this
8 favor weighs in favor of Defendants.
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10 3. Convenience and Effectiveness of Relief for Plaintiff

11 Defendants argue that with respect to the convenience and effectiveness of relief for the
12 Plaintiff, this factor is neutral. Dkt. #17 at 10. The Court disagrees. Plaintiff has asserted two
13 Washington state common law and statutory claims in addition to its federal statutory claims,
14 and therefore has an interest in convenient and effective relief in a Court in this forum that is
15 experienced in analyzing Washington laws. *See Menken v. Emm*, 503 F.3d 1050, 1061 (9th Cir.
16 2007) (finding that this factor favors plaintiff where it asserts state law claims and “may not get
17 effective relief in another forum”). Accordingly, the Court finds that this factor weighs in favor
18 of Plaintiff.
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21 4. Most Efficient Judicial Resolution of the Dispute

22 “In evaluating this factor, [the Ninth Circuit] ha[s] looked primarily at where the
23 witnesses and the evidence are likely to be located.” *Menken*, 503 F.3d at 1060–61(internal
24 quotation marks omitted). Defendants argue that this factor weighs in their favor because their
25 witnesses and evidence are primarily located in Georgia, and because Plaintiff also has offices
26 in Northern Georgia. Dkt. #17 at 10. Again, the Court is not persuaded. Plaintiff has asserted
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1 that it may need to produce up to a dozen witnesses to testify to various aspects of its
2 cyberforensic processes, licensing types and restrictions, and intellectual property, as well as
3 the data it collected and analyzed, and its investigation and subsequent identification of
4 allegedly abused product keys. Dkt. #22 at ¶ 16. Defendants have presented no details about
5 who they believe will appear as a witness on its behalf, other than Defendant Lamei, or what
6 evidence they would present that would be more conveniently produced in Georgia.
7 Accordingly, the Court finds that this factor slightly favors Plaintiff.
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9 5. Conflict with Sovereignty of the Defendants' State

10 The parties agree that there is no conflict between Washington and Georgia regarding
11 sovereignty. Accordingly, this factor favors Plaintiff. *See Menken v. Emm*, 503 F.3d 1050,
12 1060 (9th Cir. 2007).
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14 6. Extent of Purposeful Interjection

15 Defendants essentially argue that they did not interject themselves into Washington, but
16 asserts that even if they did, the slight interjection should be weighed against the overall
17 reasonableness of litigating in this forum. Dkt. #17 at 9. The Court finds that Defendants did
18 interject themselves into Washington, at least to the extent they conducted sales in this state.
19 Thus, the Court finds this factor weighs slightly in favor of Plaintiff.
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21 7. The Forum State's Interest in the Suit

22 Finally, Defendants argue that the forum state's interest in this suit is not implicated
23 because the causes of action involve federal claims. Dkt. #17 at 10. The Court does not agree.
24 First, the causes of action against Defendants not only involve federal claims for relief, but
25 Washington state law claims as well. Further, the Ninth Circuit has long recognized that each
26 state has "a strong interest in protecting its residents from torts that cause injury within the
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1 state, and in providing a forum for relief.” *Brainerd v. Governors of the Univ. of Alberta*, 873
2 F.2d 1257, 1260 (9th Cir. 1989). Accordingly, the Court finds that this factor weighs in favor
3 of Plaintiff.

4 For all of these reasons, the Court finds that the exercise of personal jurisdiction over
5 Defendant Aventis is appropriate in this forum.

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7 **B. Motion to Dismiss for Improper Venue Under Rule 12(b)(3)**

8 Defendants next move for dismissal of the claims against them for improper venue.
9 Dkt. #17 at 12. In the alternative, Defendants ask that the Court transfer the matter to the
10 Northern District of Georgia. Defendants first argue that venue is improper under 28 U.S.C. §
11 1400(a), the general copyright venue statute, because the Court lacks personal jurisdiction over
12 them. *Id.* As discussed above, the Court does have personal jurisdiction over Defendant
13 Aventis. Accordingly, there is no need to address Defendants’ other venue arguments.

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15 Thus, the Court turns to Defendants’ alternative argument for transfer to the Northern
16 District of Georgia. Dkt. #17 at 12-14. Under 28 U.S.C. § 1404 (a) the Court may transfer a
17 case to any other District in which the case could have been brought for the convenience of the
18 parties and in the interest of justice. The factors that the Court considers in analyzing a transfer
19 request largely mirror the factors for consideration of whether personal jurisdiction comports
20 with fair play and substantial justice. *See Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498
21 (9th Cir. 2000). Here the Court has already determined that the location of the evidence does
22 not weigh in favor of jurisdiction in Georgia, and Defendants agree that any District is equally
23 capable of applying the laws implicated in this matter. With respect to the location of the
24 parties and witnesses, Defendants have identified only Mr. Lamei as a potential company
25 representative and witness. The Court has already found that his appearance in this District is
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likely only at trial in this matter, and thus does not support the “extreme” burden on his business that he asserts. Likewise, the Court has also already determined that the interests of justice do not weigh in favor of jurisdiction in Georgia. Accordingly, the Court declines to transfer this case to the Northern District of Georgia.

C. Motion to Dismiss Mr. Lamei Under 12(b)(6)

Finally, Defendants have moved to dismiss Defendant Lamei for failure to state a claim against him. Dkt. #17 at 15. Because Plaintiff has already agreed to dismiss Mr. Lamei for lack of jurisdiction, Defendants’ Motion to Dismiss under Rule 12(b)(6) will be denied as MOOT.

IV. CONCLUSION

Having reviewed the relevant pleadings, the declarations and exhibits attached thereto, and the remainder of the record, the Court hereby finds and ORDERS that Defendants’ Motion to Dismiss (Dkt. #17) is GRANTED IN PART AND DENIED IN PART. To the extent that Defendants seek to dismiss Mr. Lamei for lack of personal jurisdiction, the motion is GRANTED and Mr. Lamei is dismissed as a Defendant to this action. Defendant Aventis remains in the litigation in this forum as discussed above.

DATED this 10th day of November 2016.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE